

Shaken or Stirred? Polish Constitutional (Dis)continuity between 1917–2017

MARCIN MICHAŁ WISZOWATY*

Abstract. The purpose of this paper is to answer the main research question “is there a constitutional continuity in Poland or even the Polish constitutional identity or rather there was a permanent discontinuation in last 100 years of Polish history of state?” For this purpose, the Polish constitutional history in the 20th and 21st centuries has been analyzed with respect to the changes made in the Polish political system over the past century from republican and democratic governments with a strong parliament to governments more akin to the monarchy, with a strong presidency, and even autocratic. Looking for sources of Polish political inspiration references are made to the legacy of the Polish-Lithuanian Commonwealth.

Keywords: Sejm, Senate, 1791 Constituion, 1952 Constitution, 1997 Constitution, temporary chief of state

1. INTRODUCTION

The analysis of the Polish constitutional achievements from the period of the First Republic of Poland¹ leads to the conclusion that Poles are supporters of democracy and appreciate its values, especially at the regional level, in the form of local government. The optimal political system for Poland at the central level of government, would be the mixed system. In the past it combined the monarchic and democratic elements. In modern times, it would balance the tendencies between democratization and autocratization. The systemic equilibrium between the tendencies of anarchization and the autocratization of the system was only achieved in Poland shortly.

The creators of the optimal political system for Poland should set this goal as the most important. It is important that the perennial Polish dilemma, manifested in the dispute between the pride of its own original solutions and an admiration for Western ideas, has been resolved by reconciling these two tendencies. This should be done by choosing one of the solutions commonly found in the world, but corresponding and adapted to Polish socio-political characteristics. Such a solution for Poland could be a mixed system based on the parliamentary-cabinet system, but with a strong president, balancing the influence of the parliamentary majority headed by the government. Properly designed direct democracy institutions could enhance the development of civil society in Poland. Direct democracy institutions would also strengthen the position of the president in relation to the parliament. The 1997 Constitution requires certain corrective measures to remove the errors disclosed in the text. These changes however do not require the adoption of a new constitution. It is enough to introduce innovative, corrective and restorative changes. This should be preceded by a critical analysis of political and systemic practice. It is for sure worth taking advantage of Polish experience and refer to the political tradition.

* Vice-Dean, Associate Professor, Department of Constitutional Law and Political Institutions, Faculty of Law and Administration, University of Gdańsk, mwiszowaty@konstytuty.pl.

¹ As it is called: the Nobles' Republic.

2. CONTEMPORARY ASPECTS, ACTUAL ISSUES

Throughout 2017, many conferences and seminars took place in Poland to summarize two decades of the first Polish constitution enacted after the fall of communism. On 3rd of May, which is both a national holiday and the anniversary of the Polish and European first constitution of 1791, the President of Poland officially announced that it is time to adopt a new constitution of Poland. He also said, what was surprising given his political background, that he intended to order a special constitutional referendum, most likely on November 11, 2018.² This is an important date. On this day the Poles will celebrate the 100th anniversary of independence.

The President's announcement aroused controversy. The ruling party ('Law and Justice') did not have a majority in the parliament that would guarantee the possibility of passing the changes in the constitution against the will of the opposition parties. According to the Constitution of 1997, the President's decision on the referendum must be approved by the Senate. Shortly after the speech of the president, the Speaker of the Senate expressed his skepticism about the date of the planned presidential referendum. The idea of a 'consultative' referendum, as the named by the President, raises doubts among constitutional experts about its constitutionality. The referendum should be binding and not consultative. However, the President did not stop with his declaration. He initiated a series of meetings in voivodship cities on the provisions of the future constitution, under the motto: '[f]or citizens, not just for elites'.³ Representatives of the Presidential Chancellery and experts are involved in the meetings. Finally, the proposed provisions are to be consulted by citizens in a referendum. A panel on the new constitution was also held at the International Economic Forum in Krynica in September 2017. During one of the next meetings (in Rzeszow), participants were given the questionnaires on the changes in the constitution, prepared by the Chancellery of the President.⁴

It is difficult to assess the chances of the presidential initiative.⁵ The chances of the ruling party to make any changes to the constitution seem small. However, it is worth adding that there was the case in the history of Poland of the 20th century, when a new constitution was voted in the Sejm, irrespective of the fact that the ruling party lacked the appropriate number of votes. This has been done in part by way of forts, and partly in violation of the law.

Ongoing events are a great opportunity and a reason to look at the Polish constitutional achievements and traditions. The purpose of this paper is to answer the question 'is there a constitutional continuity in Poland or even the Polish constitutional identity?' For this

² Bartkiewicz (2017).

³ The inaugural presidential consultations on the future constitution, organized by the President and the 'Solidarity' trade union in Gdansk on August 25, 2017, was entitled "A constitution for citizens, not for elites," which has raised a lot of controversy and questions about whether elites are not citizens. The President corrected that the title should be "not only for the elites", which did not diminish the doubts of the critics asking for evidence to support the thesis that it is currently only applicable to elites. See link 6.

⁴ See link 4.

⁵ Already after submitting the text to the review process, on July 25, 2018, a representative of the President of the Republic of Poland submitted and presented a draft presidential resolution on ordering the referendum. The goal was to obtain the consent of the Polish Senate, which is in this case a necessary condition for ordering a referendum. The Senate did not agree. The referendum did not take place.

purpose the Polish constitutional history in the 20th and 21st centuries will be analyzed looking at the changes made in the Polish political system over the past century – from republican and democratic governments with a strong parliament – to governments more akin to the monarchy, with a strong presidency, and even autocratic. The legacy of the so-called Polish-Lithuanian Commonwealth will be references for looking for sources of Polish political inspiration.

3. THE 1997 CONSTITUTION AND THE CONSTITUTIONAL TRADITIONS

The preamble to the 1997 Constitution declares that the Nation, as the legislator, has established the Constitution of the Republic of Poland ‘recalling the best traditions of the First and the Second Republic.’ The People did it, feeling ‘obliged to bequeath to future generations all that is valuable from our over one thousand years’ heritage.’ The contemporary Polish state is referred to, in the preamble, as the “Third Republic”. However, some of Poland’s history, such as the Kingdom of Poland established after the Congress of Vienna (1815–1832) or Napoleon Bonaparte’s Duchy of Warsaw (1807–1815), was omitted. Both functioned on the basis of the granted constitutions. The period of the Polish People’s Republic (1952–1989) was also omitted in the preamble, apart from describing this period as: ‘the times when fundamental freedoms and human rights were violated in our Homeland’, when the Nation had no ‘possibility of a sovereign and democratic determination of its fate’.

The fact of the continuation of the political system of the Polish State was thus explicitly confirmed in the text of the Constitution. Yet, in the last 100 years, i.e., since the creation of a state today referred to as the ‘Second Republic of Poland’, four full constitutions have been adopted in Poland, as well as three partial constitutions and several fundamental revisions of the constitution, in particular in 1926 and 1989.

In addition, the ‘First Republic’ was, until the second half of the 16th century, and then again from 1791, a monarchy, not a republic. In 1791, the electoral monarchy, more specifically, the noble republic with the elected king, was replaced by the hereditary monarchy. It is questionable whether in 1918, the Republic of Poland gained independence as a completely new political entity or regained its independence as a continuation of the Polish State.

One can agree with Artur Lawniczak that ‘the line of Poland constitutional evolution’s history is far from being straight’⁶. The author argues that ‘the process of subsequent political transformations led to the abandonment of the original Polish legal and political system for the construction of European, or global standards, but far from what one could call a supernatural ‘rooted in the Christian heritage’ (quote from the Preamble to the 1997 Constitution) and accepted by the living, their ancestors and successors, the original, evolving, resistant to transitional fashion, the Polish model of the state.’⁷ It is worth asking whether there is a constitutional continuation in Poland.

It is not an easy task to make a short description of the system of the First Republic. There has been a conviction since the 16th century that Poland had a unique political system and went its own original way, R. Butterwick uses the German term ‘Sonderweg’.⁸ For

⁶ Lawniczak (2007) 6.

⁷ Lawniczak (2007) 7–8.

⁸ Butterwick (2001) 1., 6.

some this uniqueness was an advantage and an anomaly for others. The Polish system was commonly but erroneously known, as the “noble democracy”, this term was invented by Friedrich Engels to stress that only the nobility ruled the state,⁹ and is usually opposed to Western European absolutism. It emphasizes the values of the latter constitutional form that provided the survival and strengthening of many European countries, while the former decided on the fall of the Polish-Lithuanian Commonwealth. Recent research has increasingly shown that neither the order of the Commonwealth of the Two Nations was so unique nor the Western monarchies were as absolute as believed.¹⁰

The political system of the First Republic can and has been contemporarily characterized as a mixed system.¹¹ According to the general concept of a mixed system, which theoretic foundations were created by ancient Greek and Roman writers, it is a system that combines elements of pure forms (usually two): monarchy, aristocracy, or democracy. Some authors also proposed the inclusion of bad forms e.g., Aristotle proposed a combination of democracy and oligarchy – ‘mixis oligarchias kai demokratias’.¹² The mixed constitution of the Commonwealth was to consist of three elements: the monarchic (the king), the aristocratic (Senate) and the democratic (noble chamber of parliament). Although the Senate was also composed of nobles, it was believed that due to their highest offices they were a noble elite, and thus, a natural aristocracy. The biggest problem with the three-component system was the difficulty in finding balance. Finally it was decided to secure it by granting a special position to the Senate. Its task was to “maintain a balance between the natural tendency of the king to transform *maiestas* into tyranny, and the tendency of citizens to convert *libertas* into self-will”.¹³ Fear of the nobles before the establishment of the “*absolutum dominium*” in Poland, with the omnipotent monarch at its head, and the protection of the so-called “golden freedom” were the main motivations and sources of political inspiration for the decisions of the nobility. Although this fear was often deliberately exaggerated, it was not groundless.

Another popular myth about the regime of the Commonwealth existing between the sixteenth and eighteenth centuries was the weak constitutional position, or even the political impotence, of the monarch resulting from the overriding role and privileges of the nobility. Monarchs were granted the throne by the nobility’s decision through universal election. Before the coronation, the king had to swear he would obey the basic principles of the state system written in the form of a special document (the Henrician Articles – ‘Artykuły henrykowskie’). He was also obliged to implement a political program declared during a specific election campaign. The program was also written in the form of a special public-legal agreement (the *Pacta conventa*). According to the last of Henrician Articles, “*de non praestanda oboedientia*”, a breach of these obligations by the king, gave the nobility the right to denounce the obedience. The detailed procedure was regulated only in 1607 and later clarified in 1609.¹⁴ According to Henrician Articles, the king was obliged to convene the Sejm (the Parliament) every two years. Without the Sejm’s consent, the king could not impose taxes, recruit troops, declare war, sign treaties, and marry. Between the sessions of the Sejm, the king had to consult his decisions with the senators’ council. He could conduct

⁹ Markiewicz (2007) 29.

¹⁰ Butterwick (2001) 1, 5–6.

¹¹ Pietrzyk-Reeves (2012) 356.

¹² Małajny (2003) 30.

¹³ Butterwick (2001) 3.

¹⁴ Lewandowska-Malec (2010) 20.

internal and foreign policy, including war.¹⁵ The principal prerogative of the monarch was appointing state officers. Obtaining the highest office allowed the nobleman to enter the Senate. Senators were not elected, but sat in the Senate *ex officio*. These appointments were mostly lifelong, but thanks to them, the king had the real possibility of building a majority in the Senate and breaking the balance of the system to secure his superior position. The effectiveness of this type of treatment carried out by electoral kings together with a significant drop of the senators' intellectual and ethical level are considered to be main internal reasons of the collapse of the Commonwealth.¹⁶

The attempt of authors of the Constitution of 3rd May 1791, to radically reform the system ended in failure. The Constitution only formally and very briefly entered into force. It was not possible to implement any of its provisions, such as the division of power, the hereditary monarchy, the modern government with departmental ministers, the united character of the state, the free mandate of a deputy and the creation of a sovereign nation composed not only of nobility but also of burghers. The Polish-Lithuanian Commonwealth has never become a constitutional monarchy. In 1795 it ceased to exist, divided between Russia, Austria and Prussia.

So, one may ask whether this system was a monarchy at all? The answer to this question is not as obvious as it might seem. On the one hand, there was a king in the system of the First Commonwealth organs. He was the chief commander of the army. He decided on the composition of one of the chambers of parliament (Senate). On the other hand, the kings were of choice, not of birth, and the key body of the state was the Sejm (consisting of: King, House of Deputies and Senat), without which no major political decision could be reached. Members of the House of Deputies (only nobility) came from elections that could be described as universal. Although it is assumed that about, on average, 10% of the population were noblemen. There were regions of the country where the proportion of nobles exceeded that size. The percentage of society that has been granted full political rights, including the electoral system, at 10% is a threshold that has not been surpassed by most European countries until the nineteenth century. In conclusion, it should be assumed that the political regime of the Commonwealth of the Two Nations was for the most part of its validity – mixed. The system combined the elements of monarchy, aristocracy and democracy.

When, after 123 years, the Polish State was reborn in 1918, paradoxically it was reborn as a monarchy and thanks to the monarchs. In 1917, the emperors of Germany and Austria-Hungary set up a Regency Council – a 3-member body of temporary authority with unambiguous monarchical character.¹⁷ This was the consequence of the Act of 5 November 1916, in which both Emperors declared that Poland would be reborn as the Kingdom.¹⁸ The Tsar of Russia made a similar declaration at the same time, but after the bolshevik revolution it lost any significance. The Regency Council was composed of three members

¹⁵ Makilla (2003) 135.

¹⁶ Witczak (2015) 98–112.

¹⁷ Patent of 12. 09. 1917 on the establishment of state power in the Kingdom of Poland ('o ustanowieniu władzy państwowej w Królestwie Polskim') in: *Dziennik Urzędowy Departamentu Sprawiedliwości Tymczasowej Rady Stanu Królestwa Polskiego*, no. 5, 2. 10. 1917, Part II.

¹⁸ Proclamation of German Emperor and Emperor of Austria and king of Hungary announcing the establishment of the Kingdom of Poland in: *Dziennik Rozporządzeń c. i k. Jeneralnego Gubernatorstwa Wojskowego dla Austriacko-Węgierskiego Obszaru Okupowanego w Polsce* of 1916 r., Part XV.

– two politicians from aristocratic families and one priest, the Polish primate.¹⁹ It was not a coincidence, but a deliberate reference to the Polish political tradition: in the First Commonwealth, the primate acted as an *interrex*, exercising full power during the interregnum.²⁰ The Council had limited powers. It was to perform its duties until the appointment of the monarch. On 11th of November 1918 when Poland gained independence, the Council continued to exist. It only handed over the supreme military authority to Józef Piłsudski, a political activist and commander of Polish legions, a regular Polish military formation established in 1914 and taking part in the First World War. It was only on 14th November 1918 that the Council handed Piłsudski full power and self-dissolved.²¹

The unresolved disputes and unexplained doubts from the era of partitions have returned to mainstream public debate along with the restoration of independence. The disputes concerned the assessment and causes of the collapse of the Polish-Lithuanian Commonwealth – a once powerful country, which has been dismantled in unprecedented way by its neighbors. New topics also appeared in the discussion: what form of government should be introduced in reborn Poland – republican or monarchical? The outcome of this first discussion influenced the latter. In general opinion, the blame for the fall of the Commonwealth of the Two Nations was borne by the nobility, as a political sovereign. Secondly, the strong position of the nobility, coupled with the mere electoral legitimacy of the king, weakened the monarchy's political position. The appointment of foreign kings to the Polish throne drew Poland into successive wars or made the electoral monarchs more interested in their home state affairs (first Sweden and then Saxony) than the interests of the Commonwealth. It was also recalled that the political ambitions of kings and magnates drew Poland into the war with its neighbors. On the other hand, the influential position of the noble aristocracy had weakened the position of the king. In this way, unlike in neighboring countries, Poland has not entered the path of absolutism and perhaps therefore has not reached the peak of political power like the neighboring countries.

All these facts and circumstances did not prevent the Poles from feeling proud of the rich and long traditions of Polish parliamentarism. This schizophrenic image of own political history oscillated around the complex of a weak king, fears of an overwhelming king, pride of the rich traditions of parliamentarism as well as territorial self-government and a negative assessment of the attitude of part of nobility using their own political privileges to prevent a favorable state decision such as tax increases, military recruitment, political and social reforms. In 1918, the international context was also of importance. The lands of Poland, which had no fixed borders, were adjacent to the new incarnation of Russia, which intended to export the idea of the Bolshevik revolution to the west. The road led through Poland and as the Bolsheviks used to say “after the corpse of dead Poland”.

¹⁹ Primate Aleksander Kakowski, Prince Zdzisław Lubomirski and Count Józef Ostrowski.

²⁰ It should be added that the title of primate was traditionally used by the archbishop of Gniezno, traditionally the oldest historical capital of Poland. A member of the Regency Council, Primate Alexander Kakowski was the Archbishop of Warsaw, who was named Primate of the Kingdom of Poland. The dispute for the title of primate was resolved after 1918, so that Kakowski was the life-long (and last) primate of the Kingdom of Poland, but the title of the primate of Poland remained with the archbishops of Gniezno.

²¹ Pietrzak (2011) 66–80.

As early as November 22nd, 1918, Józef Piłsudski declared himself the Temporary Chief of State – the supreme authority of the legislative and executive powers.²² Justice has been entrusted to independent courts. For a short time, Poland became a country ruled by a strong individual and thus approached monarchical rule. Piłsudski announced, however, that the power would be exercised only until the Legislative Sejm could be established. The Sejm was supposed to adopt a constitution that would define the political system of the state. Piłsudski issued the decree on the electoral law (very modern and fully democratic), on November 28th, 1918.²³ He kept his word and after the Legislative Sejm assembled, Piłsudski renounced his function but in a new constitutional act of 1919, defined as the first fragmentary constitution of Poland after independence, the Sejm has entrusted Piłsudski with the function of Chief of State but with a significantly reduced political position.²⁴ The political system introduced by the 1919 Constitution can be described as “parliamentary absolutism”.²⁵ According to its rules, the Parliament fully exercised its authority and other organs were subordinated to it. In this way, the Chief of State (equivalent of the President), for the only time in Poland’s history, was subject to political responsibility before the parliament. Piłsudski’s was able to balance the Sejm’s political position because of two reasons: He had great personal authority and the Constitution of 1919 mentioned him in its title as a Chief of State. For this reason, Piłsudski was well aware that his resignation would require the adoption of a new constitutional act. This would have been an arduous task in a Polish Legislative Sejm, with representatives from as many as 10 political parties and no one with no clear majority (the largest had 116 out of 432 seats).²⁶ Piłsudski still had a strong political position.

The republican system seemed unalterable, although at the initial stage of work on the preparation and adoption of a new constitution for Poland, the introduction of a monarchic system in Poland was also considered. Interestingly, during the First World War and in the following post-war years, all important political groups in Poland – conservative, christian-democratic, peasant parties and even socialists – had their own candidates for the future king of Poland. The list was quite wide and included several names.²⁷ In 1917 the draft constitution of the Kingdom of Poland, which was to establish a system of modern constitutional monarchy, was adopted and announced.²⁸ The unambiguous political

²² Article 1, Decree of 22. 11. 1918 on the highest representative power of the Republic of Poland (‘o najwyższej władzy reprezentacyjnej Republiki Polskiej’) in: *Dziennik Praw Państwa Polskiego* (Dz.Pr.P.P.) 1918, no. 17, pos. 41.

²³ Decree of 28. 11. 1918 on the electoral law of the Sejm (‘o ordynacji wyborczej do Sejmu Ustawodawczego’) in: Dz.Pr.P.P., 1918, no. 18, pos. 46.

²⁴ Resolution of Sejm of 20. 2. 1919 on entrusting Józef Piłsudski with continued office of the Head of State (‘w sprawie powierzenia Józefowi Piłsudskiemu dalszego sprawowania urzędu Naczelnika Państwa’) in: Dz.Pr.P.P. 1919, No. 19, pos. 226.

²⁵ Znamierowski (1935) 20.

²⁶ Garlicki (1989) 31.

²⁷ Majchrowski (1988) 7–10.

²⁸ *Projekt konstytucji państwa polskiego przyjęty 28 lipca 1917 roku przez Komisję Sejmowo-Konstytucyjną Tymczasowej Rady Stanu* (The draft constitution of the Polish state was adopted on July 28, 1917 by the Sejm and Constitutional Committee of the Provisional Council of State), Warszawa 1917. See also: M. M. Wiszowaty, *The draft Constitution of the Polish State of 1917 (Projekt Konstytucji Państwa Polskiego z 1917 r.). On the idea of resurrecting the Polish state in 1918 as a mixed (constitutional) monarchy and the main provisions of the monarchical constitution for Poland*, “Przeгляд Права Конституcyjnego” (Constitutional Law Review), 2018, no. 6, p. 25–40.

statement of Piłsudski from November 1918 practically ended the monarchical thread in discussions on the future Polish state system. It also eliminated the possibility of benefiting from the Polish constitutional achievements, because it was monarchic, not republican. Foreign ideas and designs had to be used in creating the foundations of the new Polish State. Simple adoption of foreign solutions rarely succeeds. Eventually, three proposals for a Polish constitution were passed to the final stage of the political negotiations. One draft modeled on the American system (the ‘presidential system of government’), was developed by the eminent lawyer, Józef Buzek (the grandfather’s brother of Jerzy Buzek, former prime minister of the Third Republic of Poland and president of the European Parliament) Professor of the University of Lwów (today in Ukraine). The second project was based on the French Third Republic’s constitution. The third suggestion, the ‘socialist draft’, was declared by the Polish Socialist Party (PPS). It included, among others, a unicameral parliament (without the Senate) and a wide range of direct democracy institutions.²⁹

Political negotiations finally led to the adoption of the Constitution of March 1921³⁰ and was modeled on the political system of the 3rd French Republic, with a strong parliament and a weak, barely symbolic position of the president coming from the parliamentary election, devoid of both the right of legislative initiative and the right of veto. The president could only dissolve the parliament with the consent of the Senate. He had practically no systemic significance. Jozef Piłsudski seemed to be the obvious and most serious candidate for the presidency. When Piłsudski learned at what extent the president’s power was determined (reduced) by the constitution, he did not take part in the election.

The use of a French political model with a strong parliamentary position is astonishing in the case of Poland – a country that in 1918 has come out of more than 100 years of non-existence. Poland did not have a developed party system, the level of political culture was low and the citizens had to learn the rules of parliamentary democracy from the beginning. In addition, the political scene was very divided. Poles have learned the defects of an ineffective parliament during the war with the Soviets (1919–1921). In order to be able to make quick, strategic decisions regarding war and peace in July 1920 at the height of the Polish-Soviet war, the State Defense Council was set up. It was a temporary body composed of representatives of the Sejm, the Government and the Army. The council made all major state decisions during the war.³¹ It was considered that the divided one-chamber parliament would not fulfill this task. Yet, after the war, the ideas of parliamentary government returned. What were the reasons? French models and inspirations were at the time ‘trendy’ and the Poles, at least since Napoleon Bonaparte’s time, had a fondness for France. Moreover, after a long period of full dependence on the absolute powers of the monarchs, Poles wanted to establish a democratic system in their homeland. However it soon turned out that the constitutional system established by the 1921 Constitution did not work and in 1926, a *coup d’etat* was carried out by Piłsudski. The result was the resignation of the government and the president. The Constitution was revised with the revision mainly concerned the strengthening of the executive power (especially the President) at the expense of the political position of the Sejm. The president was given the right to dissolve the

²⁹ Krukowski (1977) 15–16.

³⁰ Act of 17. 3. 1921 – Constitution of the Republic of Poland in: *Dziennik Ustaw – Dz. U.*, 1921 no. 44, pos. 267.

³¹ Act of 1. 7. 1920 r. on the establishment of the State Defense Council (‘o utworzeniu Rady Obrony Państwa’) in: *Dz.U.* 1920, No. 53, pos. 327. See Marszałek (1995).

parliament (the parliament lost that power) as well as the right to issue statutory decrees, during and between parliamentary sessions. The position of the government was also strengthened with passing a vote of no confidence being hampered.³² It is worth noting, that under the rule of the March 1921 Constitution the cabinets lasted on average about half a year.³³

It turned out that this was only the first stage of the process, which was to lead to the adoption of a completely new 1935 Constitution.³⁴ According to it, the President became the supreme authority of ‘unified state power’.

Interestingly, as early as in 1928, at the initial stage of work on a new constitution, which the ruling party planned to adopt by using a special mode hidden in the March Constitution, only possible in the second term of the Sejm³⁵ – suggestions were made to refer, either directly or indirectly, to the monarchic system. The suggestions came in response to a poll conducted by the ruling party (BBWR) among constitutional experts on the new constitution.³⁶ The aim of the change of regime was, according to the majority of supporters, to strengthen the authority of the head of state. Although in most of constitutional drafts, the head of state was defined as the president and the regime was to remain republican, some of the submitted proposals also included monarchical inspirations. It related especially to the shape of the president’s institution – his powers, the way he was appointed and his position in the system, but also to the parliament – especially with regard to the role of the Sejm and in the manner of determining the composition of the Senate. There were also ideas, that Piłsudski should become a permanent regent after his election as president. With him, a minor representative of one of the European dynasties would be preparing for the role of future King of Poland.³⁷ After 1926, Piłsudski served as prime minister twice, and throughout this time until his death, he was the Minister of National Defense. He was also the General Inspector of the Armed Forces – the head of the army during the peace period and a candidate for the Commander in Chief during the war. His political position was, however, much higher. He was the unofficial head of state surrounded by the highest respect. A unique manifestation of this respect was the adoption in 1938 (3 years after his death) of the Act on the Protection of the Name of Józef Piłsudski, First Marshal of Poland.³⁸ A regulation typical of the monarchy was added also in the Polish Penal Code of 1932. This regulation refers to the traditional institution of “*crimen laese maiestatis*”. Article 125 § 2 of the Penal Code provided that “anyone who despises or disrespects the President of the Republic of Poland shall be punished by imprisonment for up to five years”.

³² Act of 2. 8. 1926 amending and supplementing the Constitution of the Republic of 17 March 1921. (Dz.U., 1921, No. 78, pos. 442). Ajnenkiel (2001) 193–99.

³³ Smoliński (1985), 45.

³⁴ Constitutional Act of 23. 4. 1935 in: Dz. U. 1935 no. 30, pos. 227

³⁵ Ajnenkiel (1982) 268–69., 288–89.

³⁶ Archiwum Akt Nowych (Central Archives of Modern Records) Zespół 2/62/0, Jednostka: 84, *Dyskusja nad zmianą Konstytucji. Memoriały, propozycje, korespondencja* (‘Discussion on the change of the Constitution. Memories, proposals, correspondence’), card 131.

³⁷ Bocheński (2000) 89.

³⁸ Art. 2 stated: ‘all those who defame Józef Piłsudski’s name are subject to imprisonment up to 5 years’ (Act of 7. 4. 1938 on the protection of the name of Józef Piłsudski, the First Marshal of Poland (‘o ochronie imienia Józefa Piłsudskiego, Pierwszego Marszałka Polski’), Dz.U. 1938, No. 25, pos. 219.

In the April Constitution of 1935, the classic division of power was renounced. The function of the President was shaped in a manner similar to that of a strong monarch – he was irresponsible politically and legally (responsible ‘only before God and history’), chosen in a special procedure in which he himself had a significant influence on the choice of his successor. At the same time, the reelection limit was abolished. The president had wide powers. He could issue decrees and dissolve parliament almost at his own discretion. Significantly, no change in the constitution could be made without the President’s consent. The Senate was shaped in a manner referring to monarchic solutions known from the history of Poland. The representatives of the ‘elite’ were to enter the Senate, in accordance with a new constitutional rule called “state elitism”. It was expressed in Article 7.1 of the Constitution: ‘[t]he rights of a citizen to influence public affairs will be estimated according to the value of his efforts and services for the common good’.

Electors and candidates for the Senate of the Republic of Poland could be only persons who have reached the age of 40 and belonged to one of three elites: merit (awarded with the state orders of the highest rank), education (persons with higher education or professional qualifications) or trust (members of local, or professional self-governments, or other organizations of general interest).³⁹ By way of election, only 2/3 of the Senate composition was chosen, while 1/3 was appointed by the President himself from among persons having passive voting rights.⁴⁰

At the end of the 1930s, there was an revival in the idea of a federation of Central and Eastern European states something which Piłsudski had failed to achieve in the 1920s. This was to be a kind of reactivation of the Commonwealth of the Two Nations in the form of a loose federation of sovereign states formerly part of the Commonwealth. Over time, this idea has grown into the concept of the ‘Intermarium’, including countries such as Hungary, Romania, and South Slavic countries. After the outbreak of World War 2, talks were held with the Czechoslovak Government on the establishment of the federation. This idea was supported by the UK’s concern about Germany’s success in Europe and the attempt by Germany to create a new political organism with the consent of the United States. Finally, in 1943, the project of the Polish-Czechoslovak federation ended in a fiasco. It is worth mentioning that from the Polish side, it was proposed that the federation had a monarchic system, under the scepter of a monarch from one of the European reigning families. The Polish Prime Minister proposed the candidature of Duke of Kent. The Czechoslovak party rejected the idea of the monarchy from the beginning.⁴¹

After World War II, a new order was gradually established in Poland by the Soviets. The course was similar throughout the Soviet sphere of influence. It began with the apparent continuation of the pre-war regime, in order to establish and strengthen the new regime under the Soviet control. The communist Manifesto of the so-called Polish Committee of National Liberation (PKWN) of July 22, 1944, stated that the 1935 Constitution was illegal (which was partly true⁴²) and the “only legally binding law” of March Constitution of 1921 is still in force.⁴³ In 1947 a temporary Constitution was passed (the second one since 1918), which regulated part of the constitutional system, and referred directly to the 1921

³⁹ Article 2, Act of 8. 7. 1935 – Electoral law for the Senate in: Dz. U. 1935, No. 47, pos. 320.

⁴⁰ Ibidem, Article 40.1.

⁴¹ See Kisielewski (1991), Szymankiewicz (2013).

⁴² See Kociubiński (2013) 196–98.

⁴³ Manifest (1959) 8.

Constitution, in the rest.⁴⁴ At that time a new, full constitution was drafted and passed, or rather imposed, in 1952.⁴⁵

The ‘Little Constitution’ of 1947 contained numerous references to the pre-war system. The structure of state organs similar to that of 1921 was maintained. The names of state organs and the state coat of arms were preserved. However, the White Eagle in the coat-of-arms was deprived of its crown. This was to be a symbolic break of continuity with class-based social stratification.⁴⁶ Simultaneously, some changes were made. A collegial State Council was introduced, unknown to the Polish system. It was chaired by the President of the Republic of Poland. As in the March 1921 Constitution, the President was elected by the parliament, but this time only by the unicameral Sejm, because the Senate was abolished on the basis of a forged referendum of 1946.

The 1952 Constitution established a system of government typical of “people’s democracy” states. The institution of the President was abolished and replaced by a collegiate State Council composed this time entirely of members of parliament. The system was a variation of “parliamentary absolutism”. The 1-chamber Sejm became a unified and supreme state body. It was decided to refer to the Polish systemic tradition, but mainly in the symbolic manner. The Sejm was presided over by the Marshal (whose name existed in Poland since the 15th century), whose insignia was a marshal’s staff as in the former Poland. In 1976, the National Anthem was introduced into the Constitution⁴⁷ (it was officially established in 1927, but only at the level of the parliament act). The internal organs of the Sejm referred to the names and organization before the war. The meetings of the parliament were taking place in the building of the Sejm in Warsaw, rebuilt after the destruction of the war. At the same time, the institution of imperative mandate, existing before in the Commonwealth of Nations, was reactivated. The 1952 Constitution provided that the Members of Parliament should give the voter a report on their work and about the activity of the body to which they were elected (Article 87). But first of all, it stated that the Members represent only their voters, and could also be dismissed by voters [Article 2 (2)]. The detailed procedure for the dismissal of the deputy was determined only by the electoral law of 1985. This procedure was never applied.⁴⁸ All these efforts were aimed at creating an impression of the continuity of the systemic tradition and the democratic character of the communist system of Poland. Of course, in fact, the Sejm of the Polish People’s Republic (like the whole system of state organs) was largely a facade.

In 1989, which turned out to be declining for the People’s Republic of Poland, two key revisions of the Constitution were carried out. The first revision enacted in April, restored two traditional Polish political institutions: the Senate and the President of Poland.⁴⁹

⁴⁴ Constitutional Act of 19. 2. 1947 *about the system and scope of activity of the highest authorities of the Republic of Poland* (o ustroju i zakresie działania najwyższych organów Rzeczypospolitej Polskiej) in: Dz.U. 1947, No 18, pos. 71.

⁴⁵ Constitution of People’s Republic of Poland of 22. 7. 1952 in: Dz.U. 1952, No. 33, pos. 232.

⁴⁶ Górecki (2012) 52.

⁴⁷ Article 1 p. 46, Act of 10. 2. 1976 *on the amendment to the Constitution of the People’s Republic of Poland* (o zmianie Konstytucji Polskiej Rzeczypospolitej Ludowej), in: Dz. U. 1976, No 5 pos. 29.

⁴⁸ Kraczkowski (1997) 280–81. It should be noted that similar institutions can be found in the constitutions of other countries of the Communist zone: Bulgaria, Romania, Czechoslovakia and China.

⁴⁹ Act of 7. 4. 1989 *on the amendment to the Constitution of the People’s Republic of Poland* (o zmianie Konstytucji Polskiej Rzeczypospolitej Ludowej) in: Dz.U. 1989, No. 19, pos. 101.

The second revision, from December, changed primarily the fundamental principles of the political system.⁵⁰ The democratic and sovereign nature of the state and the symbols of the state (coat of arms and name) were restored.

In accordance with the agreement reached between the democratic opposition and the communists, Wojciech Jaruzelski, former First Secretary of the Communist Party, was elected President in July 1989. He was supposed to be a guarantor of the rights, or rather of the security of communist officials during the transition. The institution of the president, restored in April 1989, was designed in an original way, with significant differences referring to pre-war solutions. The president was supposed to be a strong organ, similar to his counterpart in the 1935 Constitution, rather than the president under the March 1921 constitution. The president's term of office was 6 years, which was shorter than before the war when it was 7 years. Like before the war, the President was to be elected by the merged chambers of the parliament – the National Assembly. The election of the president in 1989 was influenced by the fact that the Sejm was elected in the so-called “contractual elections”. Democratic opposition was granted only 35% of seats in the Sejm. The rest of the seats were to be filled by candidates from the Communist Party. Even with the fact that the opposition won 99 out of 100 Senate seats, the communists retained the required majority to win the presidential election (300 votes of the Communists against 260 opposition votes). The political position of the President was very strong. This was mainly due to three provisions. Firstly, the President had the exclusive right to appoint a prime minister. The Sejm could either approve or reject the candidature, but in the latter case it could have caused the dissolution of the parliament by the President after the expiration of the term for the appointment of the government. Secondly, only President's “acts of significant importance” required countersignature. A special parliament act was to designate these acts [Article 32f (2) of the 1952 Constitution after the 1989 amendments], but it was never adopted. Thirdly, the President could dissolve the Sejm if it passed a law or a resolution that “prevented the President from exercising his constitutional powers” (Article 30 (2) of the Constitution). This puzzling regulation was not defined. In addition, it was virtually impossible for the President to be held accountable to the State Tribunal. It required 2/3 votes of the total number of MPs. This would require support of the proposal by the Communist part of the Sejm.

4. AFTER THE SYSTEM CHANGE – SINCE 1990

In 1990, as a result of political pressure from part of the ‘Solidarity’ group, President Jaruzelski announced his readiness to resign. Two draft bills, by the deputies and the president, were introduced to the Sejm, proposing a new procedure for appointing the president through popular elections, and for shortening the term of office of President Jaruzelski. The idea of universal suffrage was initially announced by supporters of Tadeusz Mazowiecki's candidature (the first not-communist prime minister after 1989), and then supported by almost all political forces, including Lech Walesa and Wojciech Jaruzelski. In addition to political calculations, the general election of the president – unparalleled in the classical parliamentary-cabinet system – was to be an expression of the democratization of the Polish system and the end of the ‘Round Table Agreement’, symbolized by the presidency of W. Jaruzelski.⁵¹ There was no doubt that the mode of

⁵⁰ Act of 29. 12. 1989 *on the amendment to the Constitution of the People's Republic of Poland* (o zmianie Konstytucji Polskiej Rzeczypospolitej Ludowej) in: Dz.U. 1989, No. 75, pos. 444.

⁵¹ Ciapała (1999) 77–83.

election of the President, established in 1989, was based on a political calculation and was intended to lead to the election of W. Jaruzelski.⁵² The general election of the head of state can also be considered – even if such an argument was not made in the official discussion – as a reference to the Polish tradition of election of the king by the entire political nation, which at that time was the nobility.⁵³ It should be recalled that the 1921 Constitution abolished the formal recognition of the nobility, coat of arms and noble titles by the Polish State, and introduced the principle of equality of all citizens before the law (Article 96). This regulation can be seen as a symbolic act of ennobling the whole nation, at least in political terms. In December 1990, Lech Walesa was elected president.

Despite efforts, the parliament failed to adopt a new constitution on the 200th anniversary of the Constitution of 1791.⁵⁴ It was only in 1992 that an act was passed regulating the procedure for the preparation and adoption of a new constitution.⁵⁵ The provisional constitution was also adopted that year (the “Little Constitution”, the third in Polish history).⁵⁶ It upheld part of the provisions of the 1952 constitution, regulating the issues of legislative and executive power and of local self-government. Once again in history, which can also be regarded as a particular tradition, the constitution was written against the individual – this time against Lech Walesa, whose style of office as “strong hand” had aroused wide controversy. Lech Walesa’s style of presidency was similar to that of the interwar period, especially after 1926. At that time, the practice of interpreting the constitution in a manner that distorted its essence and message. The aim was to legalize the abuse of power by the ruling majority. Before the war, the leading lawyer of the ruling party was Stanislaw Car, the chief author of the 1935 Constitution. Lech Walesa had at his disposal prof. Lech Falandysz, whose name became the source of the term “falandisation of the law”, meaning the so-called ‘creative’ interpretation.⁵⁷

The 1997 Constitution was created in a special political situation. As a result of a vote of no-confidence, in May 1993, the government of Prime Minister Hanna Suchocka had to resign. President Walesa dissolved the parliament and ordered new elections for September the same year. The election was won by the Democratic Left Alliance (SLD) – a post-communist party. Initially, in the draft constitution, the shape of executive power was designed in line with the German “chancellor’s system,” where a strong prime minister was present. When Lech Walesa lost the presidential election in 1995, Aleksander Kwaśniewski, the post-communist candidate, took over as president. It was then for the first time since 1989 that all legislative and executive organs were controlled by one party. This influenced the modification of the draft constitution and the adoption of the original shape of the system of state organs. Attempts were made to combine solutions typical of a German chancellor’s system with a strong prime minister and a semi-presidential (French) president with a relatively broad prerogatives. As long as there was a significant advantage of one

⁵² Mojak (1994) 133–35.

⁵³ See Balicki, Ławniczak (2012) 416–17.

⁵⁴ Kallas (1993) 15.

⁵⁵ Constitutional Act of 23. 4. 1992 on the mode of preparation and adoption of the Constitution of the Republic of Poland (o trybie przygotowania i uchwalenia Konstytucji Rzeczypospolitej Polskiej) in: Dz.U. 1992, No. 67 pos. 336.

⁵⁶ Constitutional Act of 17. 10. 1992 on mutual relations between the legislative and executive power of the Republic of Poland and on local self-government (o wzajemnych stosunkach między władzą ustawodawczą i wykonawczą Rzeczypospolitej Polskiej oraz o samorządzie terytorialnym) in: Dz.U. 1992, No. 84, pos. 426.

⁵⁷ Grzegółka-Maciejewska, Dubisz (2008) 874.

political party, this system did not result in negative consequences. It resulted in harmonious cooperation both within the executive branch and between the legislature and the executive. However, when the presidential office was filled by a representative of another party than the majority of the Sejm deciding on the prime minister's office, there were political disputes and even serious conflicts. This situation, termed "cohabitation", is a consequence of a system of "variable political geometry". This is the term applied to the V Republic of France, which oscillates between the presidential and parliamentary system (G. Sartori, M. Duverger).⁵⁸ In some respects it also fits into the system of the Third Republic of Poland.

One of the authors of 1997 Constitution main objectives was the 'rationalization of the parliamentary system'. It was about optimizing relations between the legislative and executive powers. First and foremost, this was to strengthen the executive power to eliminate the historically known negative consequences of the overwhelming power of the parliament to paralyze executive power.⁵⁹ The president's office was designed by modeling it on the regimes of states with strong presidencies. President is appointed by the way of the general election, and has a set of more than 30 prerogatives. President may use them at his own discretion, without the need to obtain a countersignature of the Prime Minister. He has the right of legislative initiative, legislative veto, appoints the prime minister and the government, can initiate proceedings before the Constitutional Tribunal (also before signing the act). He also has extensive creative powers. He may order a national referendum (with the consent of the Senate) and shorten the term of the Sejm. He also has the right to initiate a constitutional amendment. Political practice has revealed that the power of the President is broader than it originally seemed. His powers approached those of the kings in those constitutional monarchies who foresaw the limited but still real power of the monarch. It is interesting that the controversy over the broader scope of the president's power was sought to be explained by the arguments typical of the monarchy (where the king participates in all powers) than the republic with a fundamental principle of division of power. It is a fact that many of the powers the presidents have taken over from the kings, but is it enough to treat them the same as royal entitlements? As an example, it is worth pointing out a few events of the latest Polish systemic practice and look closely at them.

According to the Constitution, the President gives orders and decorations. This is his prerogative, so he does not need the countersignature of the Prime Minister. However, pursuant to the Act on Orders and Decorations, the President's additional power was granted, which is to give consent for the acceptance by a Polish citizen of any order received from a foreign state. This old institution went into the Polish legal order from the monarchy. The President is by law the great master of Polish civilian orders as the supreme representative of the State. His powers concerning foreign orders, however, belong to the sphere of relations with other states, i.e., foreign policy. According to the constitution, foreign policy is run by the council of ministers, not the president. Moreover, in the set of Presidential prerogatives listed in Article 144 of the Constitution, there is no consent to receive foreign decorations. This means that any such decision of the President requires the countersignature of the prime minister.⁶⁰ Some authors have a different opinion.⁶¹ This is also noticeable in the political practice. There is a tendency to treat the president's power of consent for the acceptance of foreign orders as belonging to his prerogatives, under the

⁵⁸ Jakubiak (2010) 66–67.

⁵⁹ Kuciński, Wołpiuk (2012) 42.

⁶⁰ See Banaszak (2009) 677–78.

⁶¹ Tabaszewski, Jakubowski (2013) 52–53.

“orders” category. There were cases in which the President deliberately delayed the acceptance of a particular person’s foreign order for up to three years, in order to prevent him from obtaining a foreign distinction.⁶²

Another power of the president is to take a vow from the people who hold senior positions in the state. It has become one of the sources of the most serious political conflict in the Third Republic. President Andrzej Duda refused to swear in the 5 judges of the Constitutional Tribunal elected by the Sejm of the Seventh Term. Subsequently, after the Sejm of the Eighth Term appointed new 5 judges for the seats which were formally seized, the President swore them in. In this way he co-decided on the position of the judges. Importantly, the power of the president to swear in the judges is not defined in the constitution but only in the act of parliament. In addition, there are serious doubts as to whether this issue could be regulated at all. Article 197 of the Constitution, which refers to statutory regulation, mentions only that it is to regulate “the organization of the Constitutional Tribunal and the procedure before the Tribunal”. It does not mention anything about the procedure of appointing judges, which is regulated in the Constitution.

The fundamental questions arise: Is the swearing in a symbolic act, performed in the presence of the president as the supreme representative of the Republic, whose role is passive? Or maybe it is the real power of the president, and then he can both accept the vow and refuse his acceptance? Finally – what reasons can and can not justify refusing to accept the vow and who ultimately decides? The interpretation that the president used to justify his behavior is unconvincing. He raised doubts about the compatibility of the selection of judges with the Constitution (the President stands on guard of the Constitution). Unfortunately, the constitution does not grant the president such powers. The Constitution restricts the President’s guards to specific mechanisms, such as his right to initiate proceedings by the Constitutional Tribunal. The President has not waited for the judgment of the Constitutional Tribunal, which dealt with this issue. There are also serious doubts as to whether the Tribunal could effectively assess the appointment of judges. The judgments of the Polish Tribunal are effective only *pro futuro* and not retroactively. The Tribunal examined the case after the President’s refusal to swear in the judges. Doubts as to whether the President’s right to take a vow from the judge is relevant to the nomination process, the Tribunal has partially settled. It stated in the justification to the judgment of December 3, 2015 that the oath is an act of major importance and that, without its completion, the casting of judges could not take place.⁶³ Finally, assuming that the Tribunal’s ruling could be applied to the case, the President should have sworn three judges and refuse to take the oath of the other two. He acted quite differently. He sworn five other judges elected by the Sejm of the Eighth Term. First, however, in an unprecedented manner, the Sejm decided that the resolutions of the Sejm of the Seventh Term appointing five judges were null and void, with the passing of five resolutions in the night of 25 to 26 November 2015.⁶⁴ In the systemic practice, the president’s powers have been interpreted extensively. In this way they were likened to powers of a strong monarch. Of course there is still no clarity on this issue. The State Tribunal (adjudicating on matters of constitutional responsibility) did not evaluate the proceedings of the President in the areas described, so it was not officially stated that the President of the Republic of Poland violated the Constitution. In the later judgment

⁶² See link 1. Komorowski

⁶³ Judgment of Constitutional Tribunal, 3. 12. 2015., (K 34/15) in: *Orzecznictwo Trybunału Konstytucyjnego* series A, no. 11 (189) / 2015, pos. 185, p. 2461.

⁶⁴ See link 3.

of 2016.⁶⁵ The Constitutional Tribunal, however, made a statement in a way that could indirectly suggest that the Sejm's resolutions on the annulment of previous resolutions appointing the judges of the Constitutional Tribunal were unlawful. The Tribunal issued a decision to discontinue proceedings concerning these resolutions but it stated that they were not normative and therefore did not bring a new normative content to the Polish legal system. As a consequence, there was no legal basis for the Sejm to invalidate its own resolutions. The annulment should therefore be considered ineffective. This would mean that the President had sworn in the people who were not judges of the Tribunal. Many commentators and constitutional law scholars refer to the 5 judges selected by the Sejm of the Eighth term of office as so-called 'judges-doubles' selected for seats already occupied.

The problem of the President's refusal to exercise those of his powers, which had so far been recognized as a duty rather than a possibility, appeared earlier in Polish political practice. For example article 134.5 of the Constitution stipulates that the President shall, at the request of the Minister of National Defense, assign military ranks specified in the act. The word "assign" was understood as the duty of the President. Yet in political practice, it has been proven, more than once, that President may refuse to approve the nominations submitted by the Minister of National Defense.⁶⁶ The Presidents referred to their constitutional role as superior of the armed forces. It is the president, not the Defense Minister who is the head of the army. Therefore, the President has the right to refuse to approve the nomination submitted by the Minister. It is now generally considered legitimate for the President to refuse to grant a rank of a General, despite the seemingly unambiguous wording of the legislation. In constitutional studies it is emphasized that 'refusal may only take place in exceptional circumstances.'⁶⁷ On the 15th of August 2017, on Polish Army Day, the President of the Republic of Poland refused almost all nominations proposed by the Minister of National Defense. He limited them to *post mortem* nominations. Allegedly, the President did not have enough time to consider the propositions. Polish presidents used this interpretation before in the case of nominations of ambassadors and judges, to refuse to appoint specific candidates. In this way, they extended the scope of their authority to issues of foreign relations and justice nominations.

Poland's legislative veto construction is yet another reinforcement of the president's power. Veto rejection requires the Sejm to vote by a majority of at least 3/5 votes in the presence of at least half of the Members. The high attendance of Members requires the cooperation of the President's opponents with his supporters. The recent example of vetoing by the President two of the three laws amending the judicial system in Poland in 2017 proved that the veto is a real power of the President of the Republic of Poland, which can be used to effectively oppose majority in the Sejm. Since 1997 many presidential vetoes were repeatedly rejected by the Sejm. However some of them proved to be definitive and effectively blocked the entry into force of the statutes. The President can only not veto the Budget Act and the Constitution Change Act. The unusual problem appeared in connection with the veto by the President Aleksander Kwasniewski of the bills submitted to him at the end of the Sejm's term in 2001. The president vetoed a dozen laws. The Sejm was able to hold an extraordinary session to reject the president's veto but it did not happen. It was even considered that the laws that the president vetoed should be dealt with at the beginning of a

⁶⁵ Decision of Constitutional Tribunal, 7. 1. 2016, (U 8/15) in: *Orzecznictwo Trybunału Konstytucyjnego*, series A, no. 1/2016, pos. 1.

⁶⁶ See Wroński (2008) link 5.

⁶⁷ Szczurowski (2016) 10.

new term. Ultimately, the laws did not come into force due to the principle of discontinuing the work of the Sejm, but the problem sparked wide discussion. Experts began to wonder whether the President of the Republic of Poland has absolute veto under certain circumstances, and not just suspending veto.⁶⁸

The last, loud case of the president's use of a typically monarchical interpretation of his powers was to use the law of pardon. President Duda pardoned four officers of the Central Anti-Corruption Bureau, who were convicted of a criminal offense by an invalid criminal conviction. The President stated that the wording of the Constitution does not contain any requirement to pardon only those convicted by a final court judgment. In a public statement, he even said that he intended to "free the justice system from this case", which evidently illustrates the extended interpretation of the Constitution.⁶⁹ Polish criminal law doctrine opinions on the scope of the law of pardon were varied. Some scholars believe that the constitution also grants the president the right to a so-called individual abolition.⁷⁰ However, the current practice of the system was that the presidents pardoned only the finally convicted persons. President Duda's interpretation refers to the monarch's position within the system of state organs, where he is a legislative, executive and also a judicial body. In traditional monarchies the king as the highest judge performs justice through the judges. The judges issue sentences on behalf of the monarch. By granting the right of pardon, the king can correct court decisions or take them instead of the court. The president of the republic, acting in the framework of the division of power, is the body of only the executive power and therefore can correct the judicial decisions for only one of two reasons. Firstly, by clarifying the law passed by the parliament. Secondly, by making an exception by issuing an act of pardon in line with the expectations of the citizens and out of grace. However, these decisions are taken only after the judgment of the criminal court becomes final. 'Individual abolition' is a serious intervention in the activity of the judiciary. In addition, such a decision deprives the individual of the right to a fair trial. The pardon does not have the value of acquittal. In the history of Poland in the twentieth century, such a broad law was granted to a state body other than the court. It was the Council of State under the 1952 constitution of the communist People's Republic of Poland. It could also grant individual abolition in the form called "forgiveness and oblivion".⁷¹ Interestingly, the President of Poland used the exact abolition formula in 2015. This decision of the President has no precedent after 1989. In 2017, at the request of the court hearing the cassation appeal, the Supreme Court issued a resolution explaining this legal issue. It stated that "the right of pardon, as a right of the President of the Republic of Poland, specified in Article 139 of the Constitution of the Republic of Poland, may be exercised only in case of persons who have been found guilty by a valid (final) court judgment (sentenced persons). Application of the right of pardon before the date of the judgment's validity has no effect on the trial."⁷²

There are more elements of the Polish President's status that indicate their strong position, similar to the one of the monarch. The President of the Republic of Poland is only

⁶⁸ Garlicki (1993) 116.; 121.; Granat (2001) 55–60.; Balicki (2001) 97–98.

⁶⁹ See link 2.

⁷⁰ See Świecki (2017).

⁷¹ See Decree of State Council of 12. 12. 1981 about forgiveness of certain crimes and offenses (o przebaczeniu i puszczaniu w niepamięć niektórych przestępstw i wykroczeń) in: Dz. U. of 1981, no. 29, pos. 158.

⁷² Resolution of the Supreme Court, Jury of 7 judges (Uchwała składu siedmiu sędziów Sądu Najwyższego, 31. 5. 2017 (I KZP 4/17)

politically irresponsible and bears full civil, criminal or constitutional responsibility, but in the last two cases, he is only responsible before the State Tribunal. Only the National Assembly can initiate the procedure of President's responsibility before the Tribunal of State by as high as a 2/3 majority of its members. This makes their responsibility rather illusory.

In the Criminal Code of 1997⁷³ the crime of '*crimen lese maiestatis*' (treason) known from the pre-war regime, has been restored. According to Art. 131 § 1 "Anyone who commits an active attack on the President of the Republic of Poland shall be punished by imprisonment from 3 months to 5 years", and (2) "Anyone who publicly insults the President of the Republic of Poland shall be punished by imprisonment for up to 3 years." The law was applied several times after 1997 in the cases of different presidents and most of the judgments were overturned by higher courts.

Political practice also proved that the President, in favorable political circumstances, could effectively force the Sejm to appoint a prime minister. The non-appointment of the prime minister, despite three successive attempts undertaken by the president, then the Sejm, and then again by the president, ends with an obligatory dissolving the parliament. The President may appoint the same person as PM in the first and third procedures to enforce their candidacy. This happened in 2004 when President Kwasniewski nominated the same candidate for prime minister in the first and third procedure. The Sejm did not give its vote of confidence in the first procedure, but changed its approach in the third procedure in favor of the presidential candidate.⁷⁴

Political practice has also led to a negative answer to the question whether the President can be summoned, and by the force of the parliamentary inquiry committee. The only time when this was the case, the President effectively refused to appear before the committee, which aroused the protests of some politicians and constitutionalists. In the end, the President's decision was respected. Later, in the case law of the Constitutional Tribunal (Judgment no. U 4/06) and by some constitutional law scholars, it was stated that the controlling function of the Sejm does not include the President.⁷⁵

Those examples clearly indicate that the Polish President is widely regarded as "head of state". Despite the popularity of this term in everyday language, it has its specific meaning in the legal language and in the constitutional law literature. Certainly not every president and king deserve this term. The head of state is the governing body. If it is not a governing body over the whole system of state organs then it occupies such a position at least in the executive branch e.g., the President of the United States. It is best if such supremacy is formally confirmed in the constitution. Such an important issue can not be implied. In the Polish Constitution, there is no mention of the President being the "head of state", at all. The President is designated as "the highest representative of the Republic of Poland (Article 126.1) and 'the representative of the State in external relations' (Article 131). It does not make him the "head of state" within the meaning of constitutional law.⁷⁶ Notwithstanding this, the systemic practice has departed from the letter of law. Such a tendency causes in Poland an extended interpretation of the President's powers, bringing negative consequences in the sphere of political practice. Consequently, there is a disturbance in the balance of power. Appropriate changes to strengthen the specific body

⁷³ Dz.U. of 2016, pos. 1137 (annotated text).

⁷⁴ Mojak (2007) 214–15.

⁷⁵ See Malczewski (2010) 86, 91.

⁷⁶ Wiszowaty (2017) 128–34.

can be made in the constitution, but through a formal change. Interpreting powers of the authority in an extensible manner should always be assessed negatively.

After this cross-sectional analysis, it is time to summarize and answer the main research questions. What model of the system have Poles create in the 100 years since independence? Is it possible to talk about the continuity of the system, or rather its permanent discontinuation? Is it possible to talk about the Polish constitutional identity, typically the Polish system as a result of nearly 100 years of evolution? If so, what is the model?

The history of the Polish political system is very complex. In the course of the passing century, Poland experienced almost all forms of government, from fragmentary monarchy through dictatorship, parliamentary rule, parliamentary authoritarianism, oligarchy and totalitarian rule, and finally liberal democracy.

In common belief, the First Commonwealth (a Noble Republic) regime (before 1795) was affected by the overwhelming position of the parliament of the nobility and consequently, too weak executive (royal) power, which was constantly constrained by the fear of the nobility before the establishment of absolutist rule. The selfishness and mistrust of the deputies combined with the weak position of the king supposedly led eventually to the collapse of the Polish-Lithuanian state in the 18th century.

This myth has been shown is a great simplification and partly untrue but has proved to be extremely popular. After 1918 until today, one can notice the tendency of the creators of the Polish system to build strong, single-handed authorities.⁷⁷

When Poland regained its independence in 1918, a very democratic system was established with the leading position of the parliament. But after a few years in 1926, as a result of the negative evaluation the constitution was revised and the executive power was strengthened. This practice continued until the outbreak of World War II, fixing it in 1935 in a new constitution, which established the position of president as the supreme and superior authority with broad, even monarchic powers (there are authors who consider Charles de Gaulle to form the Constitution of the V Republic of France following the Constitution of 1814, but also the Polish ‘April’ Constitution of 1935).⁷⁸

After Poland regained its independence and sovereignty in 1989, the idea of a strong parliament was no longer attractive. It was decided to strengthen the executive power. This was the process of ‘rationalization of the parliamentary system’. It resulted in a system with a potentially strong prime minister, modeled on the German Chancellor, and at the same time with a strong president, based on the President of V Republic of France. The general rules of the parliamentary-cabinet model of government were preserved. The political model was not well thought out. It could lead to a serious political conflict between the president and the prime minister if each of them represents a different political environment. Interestingly, the rationalization also applies to the parliament. For example, both the Speaker of the Sejm and the Speaker of the Senate have broad powers – not only towards Members, but also in issues related to the organization of the work of chambers and its functioning.

⁷⁷ The Polish Sejm was never as strong as it seems. It was also composed of a king. The House of Deputies, composed of representatives of the nobility, was in a natural conflict with a Senate composed of magnates, noble aristocrats, with interests other than minor nobility. Kings had quite a wide range of effective policies. Much depended on monarch’s personal predisposition, ambition and external political context. Neither the parliament was so strong nor the king so weak.

⁷⁸ Skrzydło (1968) 282.

So can one say that Poles are, in fact, opponents of democracy, or – that Poles are not suited to democracy and need or expect the rule of a strong individual? Or maybe are Poles, in the depths of their souls, monarchists? There are many facts to support these claims, from the low turnout in the parliamentary elections and the low opinion of the parliamentarians in the opinion polls. At the same time, widespread social acceptance in Poland for decisive actions undertaken by strong individuals is noticed, even if they are at the border of law, or are incompatible with it, but taken from ‘higher motives’. It is not a coincidence that the institution of the President was designed in constitutional acts after 1990 as a strong and empowered body, which is typical of the presidential and semi-presidential system rather than parliamentary-cabinet system.

A positive answer to the questions posed would be wrong. The analysis of the Polish constitutional achievements not only of the past century, but also from the period of the First Commonwealth of Poland leads to the conclusion that Poles are supporters of democracy and appreciate its values, especially at the regional level, in the form of local government. It is also a tradition dating back to the times of the First Republic when a very effective system of local authority was created and run by the settled nobility. Traditionally, the Polish nobility was learning democracy and practicing it mainly in the structures of local self-government. The optimal political system for Poland at the central level of government would be the mixed system. In the past, it combined the monarchic and democratic elements. In modern times, it would balance the tendencies between democratization and autocratization. The decision to create a system that would provide an advantage to either the parliament or the ‘head of state’ would bring negative consequences, as it already happened in the past. Excessive democracy and the predominance of parliament led to anarchization of politics and its extreme inefficiency.

On the other hand, the supremacy of the individual body, also informal, resulting from political practice, led to building the entire political system around one person. When this person was suddenly found lacking, the entire political system collapsed. It is important to remember that there are many factors, as well as inconsistencies in the Constitution of 1997, which can allow the individual to gain a strong political position. An example is the ambiguous relationship between the authorities within the executive branch (the Council of Ministers with the Prime Minister and the President) and the unclear constitutional status of the President. It is also important that the position of the Prime Minister is not merged with the function of the chairman of the ruling party. In case of a single party victory in the parliamentary and presidential elections, it allows the control from the “rear seat” by the chairman of the ruling party over the prime minister or even the president. On the other hand, the possibility of combining ministerial and parliamentary functions favors the accumulation of power by the ruling party with a serious reduction or even a violation of the rights of the opposition. Another flaw in the Polish system is the ill-considered status of the Senate. Historically, this was mostly a body that was significantly different from the Sejm, and thus limited the possibility of one party to gain a dominant position. There are various proposals for the reform of the Senate, e.g., as a chamber composed of representatives of local government or groups of interests. It is also proposed to broaden the powers of the Senate.⁷⁹ Such a Senate, different from a party-run Sejm, could obtain, for example, the right of veto, as well as the control powers that it currently does not have. The Senate could decide on a motion of censure for the cabinet (which today is a fiction) and set up investigative committees.

⁷⁹ See Jamróz (2013a), 133.; Jamróz (2013b), 505.

Another defect of the consitutional system is the ineffective system of formal guarantees of the rule of law, including the weak position of the judiciary, which is also a Polish tradition since the First Commonwealth. The weak position of the courts facilitates the autocratization of the system in political practice. The anarchization of the system is due to the still low political and legal culture, including lack of effective guarantees of the rights of parliamentary opposition and low appreciation of its role. It is known, without these elements a democratic system can not exist and often takes the form of a caricature closer to oligarchy than democracy. Unfortunately, in Poland the institution of “the People” was not formed and settled, to replace the former “Political Nation” of the noblemen. Part of the nobility has become degraded. Most of the peasants and townspeople were not able to create a new nation on their own. The systemic equilibrium between the tendencies of anarchization and the autocratization of the system was only achieved in Poland shortly. The creators of the optimal political system for Poland should set this goal as the most important. The Communist rules have proven that it is possible to create a system that will refer to the Polish centuries-old tradition in the external, symbolic layer, having nothing in common with it in its essence. Communism was a veiled totalitarian, later authoritarian, system, which was alien to the Polish systemic tradition. Contrary to the situation of 1918 and even 1989, Poland now has quite a rich, own democratic experience. Tradition was always important to Poles. Another, characteristic feature of Polish aspirations is “Westernization”. This means an admiration for the culture of the West and the desire to confirm and tighten relationships with it. This can be achieved by referring to the solutions present in Western democracies. Its different varieties have been tested in Poland since 1918. It is important that the perennial Polish dilemma, manifested in the dispute between the pride of its own original solutions and the admiration for Western ideas, has been resolved by reconciling these two tendencies. This should be done by choosing one of the solutions commonly found in the world, but corresponding and adapted to Polish socio-political characteristics. For many reasons, the author is skeptical that the Chancellor’s system in the German or British (Prime Minister’s) model could be succesfully introduced in Poland. The reason is primarily the absence of political and social factors balancing the strong position of the Prime Minister, such as those in Germany e.g., the Federal Government and the Bundesrat, its guardian or Great Britain e.g. long political tradition and strong political culture, not to mention the monarchy. Such a solution for Poland could be a mixed system based on the parliamentary-cabinet system but with a strong president, balancing the influence of the parliamentary majority headed by the government.

5. CONCLUSION

Properly designed i.e., unlike today, direct democracy institutions could enhance the development of civil society in Poland. Direct democracy institutions would also strengthen the position of the president in relation to the parliament. The 1997 Constitution requires certain corrective measures to remove the disclosed errors. These changes do not require the adoption of a new constitution. It is enough to introduce innovative, corrective and restorative changes. This should be preceded by a critical analysis of political and systemic practice. It is worth to take advantage of the Polish experience and to refer to the political traditions and experiences.

LITERATURE

- Ajnenkiel, Andrzej, *Konstytucje Polski 1791–1997* (Polish Constitutions 1791–1917) (Wiedza Powszechna 1982).
- Ajnenkiel, Andrzej, *Konstytucje Polski 1791–1997* (Polish Constitutions 1791–1917) (Rytm 2001).
- Balicki, Ryszard, *Udział Prezydenta Rzeczypospolitej Polskiej w postępowaniu ustawodawczym* (Participation of the President of the Republic of Poland in Legislative Proceedings) (Wydawnictwo Uniwersytetu Wrocławskiego 2001).
- Balicki, Ryszard – Ławniczak Artur, ‘Tradycja monarchiczna w ustroju politycznym RP’ in: Banaszak, Bogusław – Jabłoński, Mariusz – Jarosz-Żukowska, Sylwia (eds) *Prawo w służbie państwu i społeczeństwu: prace dedykowane Profesorowi Kazimierzowi Działosze z okazji osiemdziesiątych urodzin* (Wydawnictwo Uniwersytetu Wrocławskiego 2012) 411–22.
- Banaszak, Bogusław *Konstytucja Rzeczypospolitej Polskiej. Komentarz* (Constitution of the Republic of Poland. A Commentary) (CH Beck 2009).
- Bartkiewicz, Artur, ‘Andrzej Duda zapowiada referendum ws. konstytucji w 2018 roku’ (Andrzej Duda Announces a Referendum on the Constitution in 2018), 3. 5. 2017. Rzeczpospolita.
- Bocheński, Adolf ‘Ustrój a racja stanu’ (Political System and Reason of State) (*O ustroju i racji stanu Rzeczypospolitej*) (Wydawnictwo Sejmowe 2000).
- Butterwick, Richard, ‘Introduction’ (*The Polish-Lithuanian Monarchy in European Context, c.1500–1795*) (Pallgrave Macmillan 2001) 1–23.
- Ciapała, Jerzy, *Prezydent w systemie ustrojowym Polski (1989–1997)* (President in the Political System of Poland (1989–1997)) (Wydawnictwo Sejmowe 1999)
- Garlicki, Andrzej, *Pierwsze lata Drugiej Rzeczypospolitej* (First Years of the Second Republic of Poland) (Krajowa Agencja Wydawnicza 1989).
- Garlicki, Leszek ‘Opinia w sprawie skutków zakończenia kadencji sejmiku dla postępowania ustawodawczego’ (Opinion on the Effects of the Termination of the Parliamentary Term on Legislative Proceedings) (1993) 3 Przegląd Sejmowy, 112–17.
- Górecki, Dariusz, *Polskie prawo konstytucyjne* (Polish Constitutional Law) (Wolters Kluwer 2012).
- Granat, Mirosław ‘Weto Prezydenta wobec ustawy a zasada dyskontynuacji prac Sejmu’ (President’s Veto against the Act and the Principle of Discontinuation of the Work of the Sejm) (2001) 4 Ekspertyzy i Opinie Prawne, 55–60.
- Grzegółka-Maciejewska Agnieszka, Dubisz Stanisław, *Uniwersalny słownik języka polskiego* (Universal Dictionary of Polish Language) Vol. 1, A–J, (Wydawnictwo Naukowe PWN 2008).
- Jakubiak, Łukasz, *Koabitacja w systemie politycznym V Republiki Francuskiej* (Cohabitation in the Political System of the 5th French Republic) (Wydawnictwo Uniwersytetu Jagiellońskiego 2010).
- Jamróż, Lech, ‘W sprawie wzmocnienia statusu ustrojowego Senatu RP’ (On Strengthening the political status of the Senate of the Republic of Poland) in: Bożyk, Stanisław (ed.) *Aktualne problemy reform konstytucyjnych* (Temida2 2013a) 133–50.
- Jamróż, Lech, ‘Uwagi o statusie ustrojowym Senatu w kontekście sprawowania przez parlament funkcji ustawodawczej (na gruncie Konstytucji RP)’ (Remarks about the Political Status of the Senate in the Context of the Parliament’s Legislative Function (based on the Constitution of the Republic of Poland)) in: M. Grzybowski, G. Kuca (eds.) *Ustroje. Historia i współczesność. Polska – Europa – Ameryka Łacińska* (Wydawnictwo Uniwersytetu Jagiellońskiego 2013b) 505–13.
- Kallas, Marian, *Mała konstytucja z 1992 r.* (The Temporary Constitution of 1992) (Wydawnictwo Sejmowe 1993).
- Kisielewski, Tadeusz, *Federacja Środkowo-Europejska. Pertraktacje polsko-czechosłowackie 1939–1943* (Central European Federation. Polish-Czechoslovak Negotiations 1939–1943) (Ludowa Spółdzielnia Wydawnicza 1991).
- Kociubiński, Piotr, *Powojenne przekształcenia własnościowe w świetle konstytucji* (Post-war Ownership Transformations in the Light of the Constitution) (Wolters Kluwer 2013).
- Kraczkowski, Romuald, ‘Sejm w okresie PRL’ (Sejm in Communist Poland) in: Bardach, Juliusz and others (eds), *Dzieje Sejmu Polskiego* (Wydawnictwo Sejmowe 1997) 265–306.
- Krukowski, Stanisław, *Geneza konstytucji z 17 marca 1921 r.* (The Genesis of the Constitution of March 17, 1921) (Ludowa Spółdzielnia Wydawnicza 1977).

- Kuciński Jerzy, Wołpiuk Waldemar J., *Zasady ustroju politycznego państwa w Konstytucji Rzeczypospolitej Polskiej z 1997 roku* (The Principles of the Political System in the Constitution of the Republic of Poland of 1997) (Wolters Kluwer 2012).
- Lewandowska-Malec, Izabela 'Tradycje odpowiedzialności prawnej monarchy w Polsce' (Traditions of the Monarch's Legal Responsibility in Poland) (2010) 4 Państwo i Społeczeństwo 13–22.
- Ławniczak, Artur, *Prawowitość aktualnej postaci państwa polskiego* (Legitimacy of the Current Form of the Polish State) (Rojalista 2007).
- Majchrowski, Jacek Maria, *Ugrupowania monarchistyczne w latach Drugiej Rzeczypospolitej* (Monarchist Groups in the Second Republic of Poland) (Ossolineum 1988).
- Makiła, Dariusz, *Władza wykonawcza w Rzeczypospolitej: od połowy XVII wieku do 1763 roku: studium historyczno-prawne* (Executive Power in the Polish Lithuanian Commonwealth: from the Mid-17th Century to 1763: A Historical and Legal Study) (Adam Marszałek 2003).
- Malczewski, Łukasz, 'Status prawno-ustrojowy Prezydenta RP przed komisją śledczą' (Legal and Political Status of the President of the Republic of Poland before the Investigation Committee), (2010) 3264 Acta Universitatis Wratislaviensis, Przegląd Prawa i Administracji LXXXIII, 79–91.
- Małajny, Ryszard M., *Trzy teorie podzielonej władzy* (Three Theories of Divided Power) (Volumen 2003).
- Manifest Polskiego Komitetu Wyzwolenia Narodowego* (Manifesto of the Polish Committee of National Liberation) (1959) 2 Rocznik Lubelski, 8.
- Markiewicz, Mariusz, *Historia Polski 1492–1795* (History of Poland 1492–1795), (Wydawnictwo Literackie 2007).
- Marszałek, Piotr Krzysztof, *Rada Obrony Państwa z 1920 roku. Studium prawnohistoryczne* (The Council of State Defense from 1920. Legal-historical Study) (Wydawnictwo Uniwersytetu Wrocławskiego 1995).
- Mojak, Ryszard, *Instytucja Prezydenta RP w okresie przekształceń ustrojowych 1989–1992* (The Institution of the President of the Republic of Poland in the Period of Political Transformation, 1989–1992).
- Mojak, Ryszard, *Parlament a rząd w ustroju Trzeciej Rzeczypospolitej Polskiej* (Parliament and the Government in the System of the Third Republic of Poland) (Wydawnictwo UMCS 2007).
- Pietrzak, Jerzy 'Przywileje i godności Prymasów Polski' (Privileges and Honours of the Primate of Poland) (2011) 5 Studia Prymasowskie 57–98.
- Pietrzyk-Reeves, Dorota, *Ład Rzeczypospolitej. Polska myśl polityczna XVI wieku a klasyczna tradycja republikańska* (Orderliness of the Republic. Polish Political Thought of the 16th Century and the Classic Republican Tradition) (Księgarnia Akademicka 2012).
- 'Projekt konstytucji państwa polskiego przyjęty 28 lipca 1917 roku przez Komisję Sejmowo-Konstytucyjną Tymczasowej Rady Stanu' (The Draft Constitution of the Polish State adopted on July 28, 1917 by the Sejm and Constitutional Committee of the Provisional Council of State) (Warszawa 1917).
- Skrzydło, Wiesław, 'Problem recepcji zasad ustrojowych na przykładzie Francji i Polski międzywojennej' (The Problem of the Reception of Constitutional Principles on the Example of France and Interwar Poland) in: Zins, Henryk (ed.) *Polska w Europie. Studia historyczne* (Polskie Towarzystwo Historyczne 1968) 273–87.
- Smoliński, Tadeusz, *Rządy Józefa Piłsudskiego w latach 1926–1935. Studium prawne* (The Rule of Józef Piłsudski in the Years 1926–1935. A Legal Study) (Wydawnictwo Naukowe Uniwersytetu Adama Mickiewicza 1985).
- Szczurowski Bartosz, 'Art. 134' in: Saffjan, Marek – Bosek, Leszek (eds.) *Konstytucja RP. Tom II. Komentarz do art. 87–243* (CH Beck 2016).
- Szymankiewicz, Błażej, 'Koncepcje sojuszy polsko-czechosłowackich w latach 1939–1943' (Concepts of Polish-Czechoslovakian Alliances in 1939–1943) (2013) 1(4) Historia Slavorum Occidentis, 165–78.
- Świecki, Dariusz, 'Art. 560' in: *Kodeks postępowania karnego. Komentarz. Tom II* (Code of Criminal Procedure. A Commentary. Volume II) (Wolters Kluwer 2017).
- Tabaszewski Robert K., Jakubowski Paweł, *Ustawa o orderach i odznaczeniach. Komentarz* (Act on Orders and Decorations. A Commentary) (Wydawnictwo UMCS 2013).

Wiszowaty, Marcin Michał, *Relikt monarchii czy filar republiki? Refleksje na temat instytucji prezydenta III RP na tle polskich i amerykańskich reminiscencji ustrojowych* (A relic of a Monarchy or a Pillar of the Republic? Reflections on the Institution of the President of the Third Polish Republic against the Background of Polish and American Political Reminiscences) in: Dudek, Dariusz (ed.) *Zmieniać Konstytucję, czy nie zmieniać? Materiały 58. Zjazdu Katedr i Zakładów Prawa Konstytucyjnego, Zamość, 2 – 4 czerwca 2016 r.* (Wydawnictwo KUL 2017) 121–64.

Witczak, Jakub, *Sarmacki republikanizm. Między prawem a bezprawiem* (Sarmatian Republicanism. Between Law and Lawlessness) (Erica 2015).

Znamierowski, Czesław, *Konstytucja styczniowa i ordynacja wyborcza* ('January' Constitution and Election law), Nasza Księgarnia 1935.

LINKS

1. Komorowski 'odblokował' order dla Marcinkiewicza. Lech Kaczyński zwlekał trzy lata, (Komorowski „unlocked” the order for Marcinkiewicz. Lech Kaczyński delayed three years) 5.7.2010, 'Gazeta Wyborcza', <http://wiadomosci.gazeta.pl/wiadomosci/1,143907,8104181,Komorowski_odblokowal_order_dla_Marcinkiewicza_.html> accessed: 22 November 2017.
2. 'Postanowiłem uwolnić wymiar sprawiedliwości od tej sprawy', ('I decided to relieve the justice system from this matter') 18.11.2015, Prezydent.pl <<http://www.prezydent.pl/aktualnosci/wydarzenia/art,69,postanowilem-uwolnic-wymiar-sprawiedliwosci-od-sprawy-m-kaminskiego.html>> accessed: 20 November 2017.
3. 'Sejm przyjął uchwały o nieważności wyboru sędziów TK' (The Sejm adopted resolutions on the invalidity of the election of the judges of the Constitutional Tribunal), Polska Agencja Prasowa (Polish Press Agency) 26.11.2015 <<http://www.pap.pl/aktualnosci/news,436917,sejm-przyjal-uchwaly-o-niewaznosci-wyboru-sedziow-tk.html>> accessed: 22 November 2017.
4. 'Spokojnie i merytorycznie o Konstytucji w Rzeszowie. Początek społecznej debaty konsultacyjnej' (Peacefully and substantively about the Constitution in Rzeszów. The beginning of a social consultative debate), 18.9.2017, Prezydent.pl <<http://www.prezydent.pl/kancelaria/referendumkonsultacyjne/aktualnosci/art,5,cykl-spotkan-regionalnych-w-sprawie-referendum-konsultacyjnego-zainaugurowany-w-rzeszowie.html>> accessed: 20 November 2017.
5. 'Wroński, Piotr 'Wojna o generałów' (War for generals) 29.4.2008, 'Gazeta Wyborcza' <<http://wyborcza.pl/1,75398,5164556.html>> accessed: 20 November 2017.
6. Wystąpienie Prezydenta RP podczas konferencji 'Konstytucja dla obywateli, nie dla elit' (Speech of the President of Poland during the conference "Constitution for citizens, not for the elite), 25.8.2017, Prezydent.pl <<http://www.prezydent.pl/aktualnosci/wypowiedzi-prezydenta-rp/wystapienia/art,262,wystapienie-prezydenta-rp-podczas-konferencji-konstytucja-dla-obywateli-nie-dla-elit.html>> accessed 20 November 2017.